unconsciously slips into the familiar groove. Every court of last resort tends to develop an individuality of its own. In a very real sense judges never die, but sit forever upon the bench from which their opinions were delivered, so that a court changes only by gradually adding new members to its roll, never by dropping old ones.

The principle announced in the case under review would probably be accepted in any jurisdiction as a clear and correct statement of the law. But it has always been recognized that in this class of cases the difficulty lies in the application of the principle. When is the plaintiff's wrongful act to be looked upon as a cause and not as a mere condition of the injury? If the automobile had been registered it would have been of the same size, with the same passengers, in the same place, going at the same speed. How can the mere absence of an entry in a registration book be deemed to have a tendency to cause a collision at a railroad crossing? Seemingly, to no greater extent than the fact that the day happens to be Sunday can be looked upon as the cause of an injury occurring on that day. *Illinois Railroad Co.* v. *Dick,* 91 Ky. 434, 15 S. W. 665; *Philadelphia etc. Co.* v. *Towboat Co.,* 23 How. (U. S.) 209; *Carroll* v. *Staten Island R. R. Co.,* 58 N. Y. 126.

E. R. S.

NATURE OF BENEFICIARY'S INTEREST IN ENDOWMENT INSURANCE POLICY.—The respective rights of the beneficiary in an endowment policy of insurance and of the insured who has in the policy reserved to himself the power to surrender the policy before maturity, furnish the subject for an interesting discussion and decision by the Massachusetts Supreme Court in the recent case of *Blinn* v. *Dame* (1911), — Mass. —, 93 N. E. 601. The case is particularly interesting and noteworthy because, according to SHELDON, J., who delivered the opinion of an apparently unanimous court, there is no reported case bearing directly on the point involved.

The facts of the principal case briefly are these: Warren Dame made application for and was granted a policy of life insurance in the Penn Mutual Life Ins. Co. The policy provided for the payment by the company of $10,000 to the insured, his executors, administrators or assigns on the tenth of July, 1918; or if he should die before that time, then the company agreed to pay the amount of the policy to Irving Dame and Mildred Dame, children of the insured "if they survived the insured (with power to the insured to surrender the policy to the said company at any time); otherwise to the insured's executors, administrators or assigns." Subsequently the insured made a general assignment for the benefit of creditors, sufficiently sweeping to cover the life insurance policy if it were assignable. The action was brought in equity to determine the rights of the assignee to the surrender value of the policy, as against the children named as beneficiaries in the policy.

The court held that the right of surrender reserved to the insured was a valuable property right, which was capable of assignment, even as against the beneficiaries of the policy, and that the assignee for the benefit of creditors was entitled by virtue of the covenant for further assurance which accompanied the assignment, to an execution of any written surrender by Warren

Dame, the insured, as might be necessary to enable the assignee to collect the surrender value of the policy. In reaching its conclusion, the court (after reference to the Massachusetts statute which enables the beneficiary of a life insurance policy to maintain an action thereon in his own name) held: (1) That by virtue of the terms of the policy, containing as it did a reservation of a power to surrender, the insured retained a valuable right in the policy which was paramount to the right of the beneficiaries. (2) That therefore whether the right of the beneficiaries in this case were vested or contingent, it was dependent upon three contingencies, among which was the failure of the father to exercise his right to surrender. (3) That since the insured might himself have exercised the right of surrender and thus have barred the rights of the beneficiaries, the right was a valuable contract right which passed by the assignment for the benefit of creditors.

Obviously the decision of the Massachusetts court is in accord with well accepted general principles, although the Kentucky court, in a case based on practically identical facts, held differently on what seems to have been an unwarranted technicality. In the case of *Townsend's Assignee* v. *Townsend*, 127 Ky. 230, it was held that where a policy provided for the surrender of the policy, that right of surrender must be exercised before the right of the beneficiaries could be barred. Accordingly a mere assignment, without a previous surrender of the policy, was held there to be insufficient to affect the rights of the beneficiaries.

The beneficiary in an ordinary life insurance policy takes such a vested interest therein that its surrender to the company for cash is unauthorized without his or her consent, even though provision for a cash surrender value has been made in the policy itself; (*People* v. *Globe Mut. Co.*, 96 N. Y. 675); and a policy for the benefit of insured's wife and children is payable to them on insured's death and the fund is not assets recoverable by the administrator. However, in the case of an endowment policy payable to a designated beneficiary on the death of the insured before the lapse of a specified time, but to the insured himself if he survive such period, the right of the beneficiary to the proceeds of the policy is dependent on the death of the insured before the lapse of the specified time. *Tennes* v. *Northwestern Mut. Life Ins. Co.*, 26 Minn. 271, 3 N. W. 346; *Miller* v. *Campbell*, 2 Misc. Rep. 518, 22 N. Y. Supp. 388. And if the policy reserves to the insured the right to change the beneficiary with the assent of the insurer the beneficiary does not take a vested interest. *Robinson* v. *U. S. Mut. Life Assn.*, 68 Fed. 825.

While it is true that the right of the beneficiary cannot be divested by assignment without his or her consent, even though the contract be an endowment policy payable to the beneficiary only in case the insured fails to live the stipulated period (*Union Central Life Ins. Co.* v. *Woods*, 11 Ind. App. 335, 37 N. E. 180, 39 N. E. 205; *Hubbard* v. *Stapp*, 32 Ill. App. 541; *Continental Ins. Co.* v. *Palmer*, 42 Conn. 60), the theory of the principal case still is consistent both with this principle and with sound reasoning.

In the principal case no attempt was made to assign the interest of the beneficiaries. Clearly that could not have been done. But by the very terms of the insurance policy the interest of the beneficiaries was made subordinate

to the interest of the insured. Although expressly refusing to decide whether the right that the beneficiaries took in the policy in question was a vested or a contingent right, the court held that the right was dependent upon the concurrence of three conditions: (1) That the insured die before July 10, 1918; (2) that the beneficiaries survive the insured; and, (3) that the insured should not have exercised during his lifetime the power of surrender reserved to himself. If these three contingencies concurred, then the right of the beneficiaries became indefeasible; but in the absence of any one of them, the right of the beneficiaries, if vested, would be defeated, and, if contingent, never would vest.

Possibly much of the confusion has arisen over the construction of the term "vested right" as applied to the interest of the beneficiary. Unquestionably it is the correct view that the beneficiary has a vested right in one sense, namely, in that whatever rights are given him by the policy may not thereafter be divested by either the insured or the insurer without his consent. *Brockhaus* v. *Kemna,* 7 Fed. 609; *U. S. Casualty Co.* v. *Kacer,* 169 Mo. 301, 69 S. W. 380, 58 L. R. A. 436, 92 Am. St. Rep. 641. But such a vested right cannot be said to include any greater interest than the policy itself gives him, from which it of course follows that he ought not to be allowed to object if the interest of the insured is assigned, so long as his rights, secured to him by the policy, remain unaffected.

With this in view the decision in *Hubbard* v. *Stapp,* 32 Ill. App. 541, which at first blush seems inconsistent with the view taken by the court in the principal case is seen to be not at all in conflict. There it was held that all that Hubbard (the insured) could assign was his own interest, which was contingent upon his living fifteen years, and as he had died within that time his interest had expired and the right of the beneficiary had become absolute. In that case there was no power of surrender reserved to the insured as in the principal case, so that in reality the holding of the court was predicated upon the theory which is enunciated with approval by the Massachusetts court, but within which the facts of the principal case do not precisely bring it. The same is true of *Insurance Co.* v. *Woods,* supra, in which the court said: "In a certain sense it is true, she (the beneficiary) may be said to have no interest in the policy until her husband's death, for it is upon this contingency that her interest in the policy depends. But in another sense, she does have an interest in the policy from the time of its delivery, although it be only a contingent interest and one which may or may not become absolute. Of that interest, contingent though it may be, she cannot be divested without her consent." See also *Ins. Co.* v. *Armstrong,* 117 U. S. 591.

As suggested at the outset, there seems to be no ground of reconciliation between the principal case and the case of *Townsend's Assignee* v. *Townsend,* supra, but if it be conceded that in a case similar to the principal case the insured reserved a right of surrender which is paramount to the rights of the beneficiaries, it is at least highly technical to say that the insured himself must exercise the right of surrender before the rights of the beneficiaries can be barred; while as a matter of fact, there would seem to be no good reason why the power to surrender, being a valuable contract right, may not

be the subject of a valid assignment as well as may any other chose in action. The beneficiary under a policy of life insurance takes a vested right that cannot be divested without his consent, but the extent of that right is limited by the instrument creating it, viz., the policy itself. C. E. E.

Expert Testimony in Michigan.—Perhaps no other feature of our judicial system has contributed more to bring into disrepute the administration of justice and to engender in the popular mind a widespread (and in some respects an apparently justifiable) distrust and disrespect for the methods employed and the results obtained by judicial investigations in this country, than have the principles and considerations, or rather the lack of these, which are permitted to govern and determine the competency of expert witnesses and the methods and safeguards under which they are allowed to give in evidence in our courts their expert opinions in cases involving questions pertaining to their respective sciences. The general public regards expert testimony, as it is permitted to be given in the majority of our courts at the present day, as almost a farce, and considers it a disgrace to our system of arriving at the truth of a disputed question, which system we like to think of as being fair, enlightened, impartial and efficient. This feeling has in the past taken definite form in the oft-expressed belief of the layman that the expert always comes prepared to testify in favor of the side which has the most money, without regard to what the facts may be, and that in a case in which experts are called to testify upon each side of a disputed proposition, the issue will be determined favorably to the side which can pay the most and whose experts can swear the hardest. It can scarcely be questioned that these beliefs and sentiments are entertained by a considerable number of the general public and have served to bring this phase of judicial inquiry into disrepute.

With a view to remedying some of the evils arising from the present methods of giving expert testimony in courts of law, statutes have, from time to time, been enacted in the several states, which attempt generally to render less intimate the relation which was popularly supposed to subsist, and in many cases did subsist, between the compensation paid the expert and the nature and effect of his testimony. A statute of this general class was that passed by the Legislature of the State of Michigan in 1905, entitled, "An Act to regulate the employment of expert witnesses," (Pub. Acts 1905, No. 175.) The nature of its provisions seemed eminently calculated to remedy some of the evils toward which the statute was manifestly directed, § 3 of the Act providing that, "In Criminal cases for homicide where the issues involve expert knowledge the court shall appoint one or more *disinterested persons,* not more than three, to investigate such issues and testify at the trial; and the compensation of such person or persons shall be fixed by the court and paid by the county in which the indictment was found, and the fact that such witnesses have been so appointed shall be made known to the jury. This provision shall not exclude either prosecution or defense from using other expert witnesses at the trial." The usefulness of this act, and